Previous references.

Ch. File No. 45-09

190

Serial Nos. 1 to 4

(courts)

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 to 4

Part B. for May 1910.

SUBJECT.

Appeal against the order of acquittal passed by the city Magte Bangalore, in an Excise case

Table of contents

1. From the Excise Comr in Mysore No 1163 & 3-8-09

Requests that an appeal may be caused to be filed in the chief court against the order of acquittal passed by the city Magte Bangalore Crl case No 543-853-1909-9.

2 To the Govt Advocate in Mysore & the Excise Comr in Mys-
No 7631-2 & 27-8-09

Direct the Govt Advocate to prefer an appeal and to report the result in due course

G. R. S. 58

P. T. O

3 From the Govt Advocate No. 230 & 24-3-1910

Reports that the appeal was dismissed and submits a copy of the judgment.

4. To the Excise commissioner No. J 3497 & 17-5-10

forwards a copy of judgment & requests him to prosecute the license holder & to report the result in due course.

G.R.S. 11] 1909-10

GENERAL AND REVENUE SECRETARIAT.

(Courts.)

NOTES.

Cls. File No. 45-09

FILE HEADING.

Appeal against the order of acquittal passed by the City Magistrate, Bangalore in an Excise Case.

From

The Excise Commissioner in Mysore

No. 1163 Dated 3-8-09. Received 7-8-09

Diary No. 9367 | Enclos. 1 file · Spare Copies | Serial No.

BRIEF ABSTRACT OF LETTER.

Requests that an appeal may be caused to be filed in the Chief Court against the order of acquittal passed by the City Magistrate, Bangalore in Criminal Case No 513-853 of 1908-09.

NOTES AND ORDERS.

1

Subd for orders.

Hcs 10.8.09

One Venkatapa was charged before the City Magistrate of Bangalore with having committed offences said to be against the Excise Rules, in having sold arrack

NOTES—First sheet

GPB—30,000—3-4-07.

G. R. S. 12j
General and Revenue Secretariat.

File No. 65 of 1907-

Serial No.

of below the prescribed strength in a false measure. He is said to have stuck a piece of tamarind to the drawcup to diminish its capacity and the spirit, sold, is said to have been of 37° U.P.

3 The accused was not an actual licenseholder but was the Employé of one. The Magistrate acquitted the accused on both counts on the ground that none but the licenseholder of the shop is liable for the breach of the conditions of the license.

4 The wording of rules 15 and 16 of the conditions of the license no doubt seemingly justify the Magistrate's view but it is to be feared that it is not quite correct. Sec 61 of the Excise Regulation (referred to by the Deputy Commr in his letter) shows that the hold persons other than holders of a license may render themselves liable to the penal provisions of the Excise Regulation. In any view the accused in this case could at least have been convicted for abetment under Sec 61

NOTE—Contn. sheet.

GPB—50,000—13-5-08

G. R. S. 12]
General and Revenue Secretariat.

File No. 45 of 1909

Serial No.

of the Excise Regulation, for having aided the licenseholder in selling weak Spirit in a false measure.

5 As the accused has been acquitted by the Magistrate it is desirable that an appeal should be filed in the interests of the Excise administration.

12/8/09. Sd

6

As a question of law is involved, the file is forwarded to the Government Advocate for favour of opinion as to early date.

Sd Sivaramaiya
for Secretary.

12/8/09

11.0.09

7 I am of opinion that this is a fit case for preferring an appeal against the order of acquittal.

S. Narayana Rao
Govt advocate

14.8.09.

8 Submitted for orders.

9 Draft submitted.

Sd

17/8/09

Sec'y.

Sd

17/8/09

Draft approved.

Dir

18/8/09

1688
18-8-09

NOTE—Contn. sheet.

GPB—50,000—13-5-08

Gu 20/8/09

G. R. S. 12]
General and Revenue Secretariat.

C5 File No. 45 of 1909.

Serial No.	
1)	I believe there is a standing order that the orders of the Dewan should be obtained for preferring appeals against ordering acquittal. May the file be submitted to the Dewan sir. 21/8/09 SH
Sec'y 19/8/09	This is not an important case, & so the Dep may move. 23/8/09 SH
	Issue
2	To the Govt Advocate in Mysore " Excise Commissioner in Mysore No J631-2 & 27.8.1909. Directs the Govt Advocate to prefer an appeal, and to report the result in due course
3	From the Govt Advocate in Mysore. No 230 & 24.3.1910. Reports that the appeal was dismissed, and submits a copy of the judgment.
13)	Subd for perusal. Secy 2.4.10 4/4/10 14/4/10 4 4 40

NOTE—Contn. sheet.

GPB—50,000—13-5-08

Serial No.

15) The copy of the Chief Court's Judgt may be sent to the Ex Commr with a suggestion that the licensee may be prosecuted for the offence committed by his employee.

16) The case indicates the need for a suitable amendment of the law so as to render the actual vendor liable in addition to the licensee

Deccan through 1882 8/4/10

8/4/10.

17) Comm. Proposals to amend the Regulations may be called for

8/4/10

The first thing to be done is to ascertain if prosecute the licence holder - Upon the result of such prosecution depend the need for an amendment of the Regulations 8/4/10 -

Note As the Chief Court rules now stands the actual vendor ie the vendor is not prosecutable for delivery without measure

1700
9.4.10

54 86
12.4.10

Note - Contn. sheet.

GPB—50.000—13-5-08

Let G. K. Deccan

G. R. S. 12 j
General and Revenue Secretariat.

Go File No. 45 of 1909-10.

Serial No.	
	Subdraft as ordered by the Dewan 30/4/10
	Draft Subd - Dras SW 3.5.10 3/5/10 7/5/10
4	To the Excise Commissioner in Mysore No J 3497 & 17.5.1910 Forwards a copy of judgment & requests him to prosecute the license holder and report the result in due course

P Rectm 26/5/10

NOTE—Contn. sheet.

GPB—55,000—27-4-09

III S 87/8 Chandrasekhara Aiyar, K.S. 1

190 1363

From

H. H. Sparkes, Esquire,

Excise Commissioner

To in Mysore.

K.S.Chandrasekhara Aiyar, Esq.,
B.A., B.L.,
Secretary to the Government of
H.H. the Maharaja of Mysore, Genl.
and Rev. Depts.

Dated

Despatched 3rd August 1909.

Received

General No. 1163

No.

Enclosure No. 1 file

Subject.

Requesting to move the Goverr
-ment to address the Chief Court
to take necessary steps for - -
revising the order of acquittal
in Criminal case No.513/853 of
1908-09 on the file of the City
Magistrate, Bangalore.

Office of the Excise Commissioner
in Mysore,
Dated, Bangalore, 3rd August 1909.

No. 1163
Ex. / file

From

H. H. Sparkes Esquire,
Excise Commissioner
in Mysore.

To

K. S. Chandrasekhara Aiyer Esquire, B.A., B.L.,
Secretary to the Government of His Highness the
Maharaja of Mysore, General and Revenue Depts.

Sir,

In forwarding herewith the correspondence ending with the Bangalore District Deputy Commissioner's docket No.1527 dated the 22nd ultimo submitting the investigation records and a copy of judg-ment in Criminal Case No. 513/853 of 1908-1909 on the file of the City Magistrate of Bangalore, I have the honor to report as follows: In the case referred to above the vendor in the Kakolu Arrack shop was charged by the Inspector of the Bangalore Range before the City Magistrate of Bangalore for being in possession of dram cups render-ed short of the authorized capacity by the insertion of tamarind inside the cups, and of weak spirit, and thus for having committed offences against the Excise Regulation.

2. The Magistrate acquitted the accused with the following observations:-

1. That the accused was only a vendor under the licensee in the arrack shop at the time of the seizure of the tampered dram cups and the weak spirit;

2. That the measures had been tampered with and therefore they were not standard ones as required under Clause 15 of the license;

3. That there was nothing about a vendor committing a breach of these rules in the license, and that he was not even a licensed vendor, nor does the section 56 of the Excise Regulation make any one but the holder of the license liable for breach of the license; only two clauses 23 and 25 of the license apply to vendors, whilst under the old license form, the licensed vendor was equally responsible with the license holder.

3. It may be observed that the Excise Regulation V of 1901 is more permissive than restrictive in its character It does not necessitate that a vendor should be licensed or recognised unless so desired by the Deputy Commissioner.

4. In the Criminal Revision Case No.639 of 1886, referred by the Acting District Magistrate of Tinnevelly, the Madras High Court has observed that sections 56 and 64 of the Act corresponding to the same sections of the Mysore Regulation) must be read together adding that if as suggested by the District Magistrate no offence could be committed under section 56 but by the holder of the license the words," for any offence committed by any person in his employ and acting on his behalf under section 56" would be insensible. The words "being the holder of a license" in section 56 must be

must be taken to include any person in his employ and acting on his behalf for the time being.

5. Besides, in Case No. 206/350 of 1907-08 on the file of the same Magistrate, in which the vendor and not the licensee was right -ly charged for possession of short measures, and wrongly for being an unlicensed vendor, in as much as his name had not been entered in the license, the accused was conviceted of the first and acquitted of the second charge. In deciding the case, the Magistrate has ob served that no offence has been committed by the accused under Section 15 of the Regulation which merely says "no liquor shall be sold without a license, as the Regulation does not require the vendor to hold a separate license. The Magistrate convicted the accused and sentenced him to a fine of Rs 3/-, in default one week's rigorous imprisonment for breach of the condition 15 of the license punishable under section 56 of the Regulation on the ground that the accused was bound by the terms of the license under section 12 of the Regulation.

6 In the present case, the Magistrate, though he found the charges brought home against the accused, has acquitted him as he was not a licensed vendor. This decision not only conflicts with a previous finding of his own in a similar case, but is clearly against the Excise Law, which, as has been observed in para 4 supra makes all persons in the employ of the licensee and acting for him liable for their acts equally with the license holder

G.R.S. 28]

File No 45-09

Serial No. 2 -

Diary No. of letter replied to

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT.
(Courts.)

, *the* 190

Date of issue 24th August 09.

Signed by M.C.S. Balasundaramiyer

READ—

Letter No 1163 dated the 3rd August 1909 from the Excise Commissioner in Mysore, requesting that an appeal may be caused to be filed in the Chief

ORDER THEREON.—NO.

Court against the order of acquittal passed in Criminal Case No 513/853 of 1908-09 on the file of the City Magistrate, Bangalore Govt vs Venkatappa, accused of having committed offences

over

SUBJECT

against the Excise rules in having sold arrack of below the prescribed strength in a false measure)

Order thereon — J 631-2 dt 45-09-2 dt 27/8/09.

Under Section 417 of the Code of Criminal Procedure 1904, the Govt Advocate in Mysore is directed to prefer an appeal in the Chief Court against the order of acquittal passed in the aforesaid Case, and to report the result of the appeal in due course.

27/8/09

Sd

for Secretary

20/8/09

To Govt Advocate

The Excise Commissioner, in Mysore

(Returning the Record)

Govt Advocate in Mysore (with an authenticated copy of judgment to be sent from the Record)

No 230
Cancelled

J 241

Office of the Government Advocate in Mysore,

Bangalore dated, 24th March 1910.

From

The Government Advocate in Mysore,

Bangalore.

To,

The Secretary to the Government of H.H. the Maharaja

of Mysore General and Revenue Departments.

Sir,

With reference to Government Proceedings No.J 631-2/ Cts 45-09-2 dated 27th August 1909, directing me to prefer an appeal to the Chief Court against the order of acquittal passed in Criminal Summary.Case No.513/853 of 1908-09 on the file of the City Magistrate Bangalore, and to report the result of the same, I have the honour to state that the Honourable Judges of the Chief Court have dismissed the appeal.

A copy of the judgment in the said appeal is here with submitted

I have the honour to be,

Sir,

Your most obedient servant,

S. Narayana Rao

Government Advocate.

In the Chief Court of Mysore at Bangalore.

Monday, the 21st day of March 1910

Present.

Mr. Justice P. S. Krishna Rao Rao Bahadur

and

Mr. Justice K. S. Chendrasekhara Aiyar Offg: Judge

Criminal Appeal No. 21 of 1909-10

The Government of Mysore, (By Mr.S.Narayana Rao, -- Government Advocate). | Appellant. Complainant.

VS

V e n k a t a p p a. | Respondent. Accused

Appeal against the order of acquittal passed by the City Magistrate of Bangalore in Criminal Summary Case No.513/853 of 1908-09 on the file of his Court.

This Criminal Appeal coming on for hearing on Wednesday, the 16th day of March 1910, the Court delivered the following:-

J U D G M E N T.

This is an appeal by Government against the acquittal of one Venkatappa by the City Magistrate of Bangalore in respect of certain acts in breach of the conditions of an arrack ---- license.

It is admitted that the accused, who was vending toddy in the arrack shop at Karkollu at the time when the acts were - committed, was not himself the holder of license, but merely the employee of the license holder. Clause (b) of section 56 of the Mysore Excise Regulation, 1901 under which the acts of the accused are sought to be brought, applies in terms only to the holder of a license or permit; but it is contended that - that section should be read with the second para of section 64, and the words "holder of a license" taken to include any --- person in his employ and acting on his behalf for the time -- being. In support of this contention the learned Government Advocate relies on Queen Empress.V. Mahalingam Servai (I.L.R.

(I.L.R. XXI Mad. 63) approving of an earlier order of the same Court (reproduced at R.647 of Vol. 1 of Weir's Digest 4th Edition) with reference to the corresponding sections of the Madras Abkari Act, from which the Mysore Excise Regulation has been borrowed. These rulings proceed on the view that the words in section 64 "for any offence committed by any person in his employ and acting on his behalf under section 56" would have no meaning or application if no offence could be committed under section 56 by any other person than the holder of the license. The same view is taken in another Madras case of 1890 also reported in Weir's Digest but not noticed in XXI Mad.63, in which it is said: "The 2nd accused was managing the shop for his brother, and not being a license holder, prima facie he would not be punishable under section 56. Incidentally, however such a person seems to be made punishable by section 64, clause 2 for he appears to be what is there called the actual offender and the section intends that the person who answers this description as well as the license holder may be punished".

With all respect to the learned Judges concerned, we must say that the view taken by them does not appear to us to be sound. Clause 2 of section 64 is no doubt badly drafted; but if it is read carefully it will be seen that its object is merely to declare and enforce the responsibility of the holder of licenses for violations of the law on the part of their employees and not to make the latter liable to be punished for acts which are only offences when committed by license holders. To hold that the clause makes a man "incidentally" or by implication punishable for what admittedly is not an offence on his part under the substantive section 56 unless he is himself the holder of a license seems to us to contravene the salutary rule that statutes imposing penalties must especially if their language be ambigious be construed strictly and should not be extended by construction. At the same time justification is needed for the words "any offence committed by any person in

in his employ" it seems to lie in the fact that section 56 is not the only penal provision referred to in section 64; there are others which deal with offences on the part of all persons generally including the servants of license holders.

Apart from this, we are fortified in the view which we take of the matter by the fact that a precisely similar view has been expressed by the Bombay High Court in Queen Empress V. Ramchendra Matadin (I.L.R. XV Bom.45 referred to with the approval in the case reported in II Bom. L.R. 663). Curiously enough, the wording of sections 56 and 64 of the Madras Act and the Mysore Regulation is (so far as the matter before us is concerned) identical with the wording of sections 45 and 53 of the Bombay Abkari Act, 1878 and with reference to these sections the Judges of the Bombay High Court say:- "When the breach of the master's license is committed by the servant, the master is punishable, and he alone, unless the servant also holds a license under the Act, for it cannot be inferred, from the description in section 53 of the servant in such a case as the "actual offender" that he also is liable to a penalty under any of the sections specified in section 53, unless his act strictly falls under those sections".

We hold, with the Bombay High Court, that to a servant not being the holder of a license section 56 of the Regulation has no application, and that therefore section 64 has no application to the accused in the present case. The appeal by Government against his acquittal must therfore be dismissed.

21st March 1910.

(Sd). P.S. Krishna Rao.

J U D G E.

(Sd).K.S.Chendrasekahara Iyer.

J U D G E.

" C O P Y ".

S. Narayana Rao

Government Advocate.

G.R.S. 26]

Cls File No. 45/09
Serial No. 4

Diary No. of letter replied to

No J.3494.

General and Revenue Secretariat
(Cls)
the 190

To The Excise Commissioner
in Mysore

Date of issue 17th May 1910

Signed by Jas N. Ramakar.

Sir,

Adverting to Govt order No J.631-2-Cls 45-09-2 dated the 27th August 1909, sanctioning an appeal against the order of acquittal of Venkatappa, passed by the City Magistrate, Bangalore, I am directed to forward herewith a Copy of the Judgment of the Chief Court on appeal dismissing the appeal, and to request that in the circumstances of

over.

SUBJECT.

the case the licensee holder may be prosecuted for the offence committed by his employee, and the result of the action taken reported to Govt with proposals to amend the Regulation except if necessary, so as to render the actual vendor alone liable in addition to the licensee.

(This has been considered later on)

Yours etc

for Secy

DFC
VHCS
3-5-10

List of enclosures

DN
3/5/10

Copied by N. Sreenivasa 13/5

Examined by

GPB—10,000—20-4-06.